No. 272.

Brf. of Atty. Gen.l (Prad.) for Appellant.

Filed Oct. 19, 1897.

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JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

THE UNITED STATES, APPELLANT,
v.
JOHN W. HERRON, APPELLEE.
No. 272.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF OF APPELLANT.

In the Supreme Court of the United States.

OCTOBER TERM, 1897.

THE UNITED STATES, APPELLANT,
v.
JOHN W. HERRON, APPELLEE. } No. 272.

BRIEF OF APPELLANT.

STATEMENT OF CASE.

Appellee was attorney for the United States for the southern district of Ohio, and as such defended the warden of the Ohio penitentiary against the prosecution of certain writs of habeas corpus sued out against him in the circuit court for the southern district of Ohio by certain United States prisoners confined in said penitentiary, upon which writs said prisoners were discharged.

Appellee was then ordered and directed by the Attorney-General to appeal said cases to the circuit court of appeals and to prepare and argue them in that court. Pursuant to these orders appellee prepared and argued said

cases before the circuit court of appeals, sitting at Louisville, Ky., outside the territorial lines of his district. Subsequently appellee presented to the Attorney-General duly certified accounts for his services in the circuit court and in the circuit court of appeals, which accounts were approved by the Attorney-General and forwarded to the Comptroller of the Treasury, who referred them to the Court of Claims, under the provisions of section 1063, Revised Statutes.

The Court of Claims rejected the account for services in the circuit court and allowed the account for services in the circuit court of appeals. Since the appellee has taken no appeal from the judgment, the only question involved in this appeal is the validity of the account for services in the court of appeals sitting outside appellee's district.

ASSIGNMENT OF ERRORS.

I.

The court erred in finding as a conclusion of law that said appellee, John W. Herron, was entitled to recover the sum of $150 on Finding IV.

II.

That the court erred in rendering judgment in favor of said appellee and against these appellants, being for the amount of services set out in Finding IV.

BRIEF OF ARGUMENT.

It seems so clear that the Attorney-General has no power to send a district attorney and the district attorney

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no power to go outside the territorial lines of his district *as a district attorney* that we do not think it necessary to argue the question.

If a district attorney be so ordered by the Attorney-General, it is not as a district attorney, but in some other capacity. If he be sent in some other capacity not incompatible with his duties as a district attorney, we concede that he is entitled to such compensation therefor as the Attorney-General may determine, provided the Attorney-General in so directing was acting within the scope of this authority.

We have contended in Garter's Case, submitted at this time, that it is the duty of the district attorney in whose district the court is sitting to represent the Government in all matters in the circuit court of appeals; or if it is not, then it is the duty of the Attorney-General and the officers of the Department of Justice.

In this view of the case this appellee could only have appeared in this circuit court of appeals as a special assistant to the Attorney-General or to the district attorney of the district in which the court was sitting.

Sections 363, 365, and 366, Revised Statutes, authorize the Attorney-General to employ attorneys or counselors to assist him or to assist district attorneys, but these must be regularly commissioned as special assistants to the Attorney-General or to a district attorney and shall take the oath required by law, none of which was done in this case. Claimant did not, then, earn any extra compensation as a special assistant attorney.

Section 365 prohibits compensation to any person besides the respective district attorneys and assistant district attorneys for services rendered the Government, "except in cases specially authorized by law, and then only on the certificate of the Attorney-General that such services were actually rendered and that the same could not be performed by the Attorney-General or Solicitor-General or by the officers of the Department of Justice or by the district attorneys."

No such certificate has been given in this case, and it would seem that no money should be paid for the service.

LOUIS A. PRADT,
Assistant Attorney-General.